

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 26991-4-III
)	
Respondent,)	
)	
v.)	Division Three
)	
JOLENE M. MATHESON,)	
)	
Appellant.)	UNPUBLISHED OPINION

Korsmo, J. — Ms. Jolene Matheson challenges the characterization of her fourth degree assault conviction as a crime of domestic violence, arguing that there was insufficient evidence of the victim’s age. The circumstantial evidence permitted the trier of fact to conclude the victim was at least sixteen. We affirm the conviction.

FACTS

Police responding to a disturbance call at 2:00 a.m. on July 25, 2007, found Ms. Matheson straddling Shawn Miller, who was lying on the sidewalk. He had a fat lip, bruises on both eyes, and a scrape on his chin. Ms. Matheson, who admitted to being age

sixteen and having consumed alcohol, told officers that she had hit Miller because he had been drinking at an underage drinking party even though he was supposed to be the designated driver. Ms. Matheson, after advice of rights, told an officer that she and Mr. Miller were always fighting, breaking up, and getting back together again.

Ms. Matheson was charged with minor in possession of alcohol and fourth degree assault, domestic violence. Mr. Miller did not testify at trial. The officers described the injuries they observed and Ms. Matheson's statements to them. One of the officers testified that he knew Mr. Miller as a student at Moses Lake High School.

Ms. Matheson was convicted of the two offenses at a bench trial in the Grant County Juvenile Court. She then appealed to this court.

ANALYSIS

The sole issue presented in this case is a contention that the evidence did not support the finding that the assault constituted "domestic violence." This court reviews a challenge to the sufficiency of the evidence to see if there is evidence from which the finder of fact could find each element of the offense proven beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 221-222, 616 P.2d 628 (1980).

A crime constitutes "domestic violence" when it is committed by a family or household member against another family or household member. RCW 10.99.020(5).

That phrase is defined in relevant part:

“Family or household members” means . . . persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship.

RCW 10.99.020(3).

There is no evidence in this record that Ms. Matheson and Mr. Miller have ever resided together. Accordingly, this crime could only constitute domestic violence if the two had been in a dating relationship and were both at least sixteen years old.

Ms. Matheson does not dispute that the two had been involved in a dating relationship. Indeed, her own statement to the officers establishes as much. Instead, she argues that there was no evidence of Mr. Miller’s age.¹

No one testified to Mr. Miller’s exact age. There was evidence in the record that he was, or had been, a high school student. There also was evidence that he was supposed to have been the designated driver that evening. A person must be at least sixteen years of age in order to obtain a Washington driver’s license. RCW 46.20.031(1). Assuming that a “designated driver” is also a legal one, Mr. Miller’s status as the evening’s designated driver suggests he was at least sixteen years of age.

¹ The police reports contained in the clerk’s papers show that Miller was 19. Clerk’s Papers 3. However, there is no indication the reports were admitted into evidence at trial.

While the evidence is admittedly on the “thin” side of the ledger, we believe a rational trier of fact could infer that Mr. Miller was at least sixteen years of age when Ms. Matheson assaulted him. Accordingly, the evidence supported the determination that this crime was one of domestic violence. *Compare State v. Hill*, 83 Wn.2d 558, 560, 520 P.2d 618 (1974) (evidence was sufficient despite absence of direct testimony of identity of defendant).

The judgment is affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Korsmo, J.

WE CONCUR:

Kulik, A.C.J.

Brown, J.